

NO. 49572-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

JESSE IRWIN,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Derek Vanderwood, Judge

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BRIEF OF APPELLANT

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A. INTRODUCTION

This case presents the issues of whether a vehicle search warrant was supported by probable cause, and whether it was overbroad.

In support of his warrant application, Officer Fraser detailed the following. He stopped a van for a seatbelt violation. Jesse Irwin was driving. Shelby Cahill was his only passenger. Both parties had felony convictions. Fraser arrested Irwin on an outstanding warrant and for driving with a suspended license. A consent-based search of Cahill's backpack uncovered methamphetamine and evidence of drug dealing. Fraser also observed various items in the van that aroused his suspicions, including bicycles, electronics, two wallets, and other items that he could not see.

The affidavit contained no explanation of how or why Fraser believed the items to be stolen beyond generalized statements of the habits of criminals. It also contained no allegations of drug use by Irwin, beyond an implication based on his association with Cahill. Despite this, the magistrate issued a warrant to search the vehicle and any containers inside, which included a backpack officers knew belonged to Irwin. The warrant authorized a search of three broad categories: evidence related to drug use or paraphernalia, identity theft, and theft or possession of stolen property.

This Court should find the warrant lacked probable cause and was overbroad, requiring reversal of Irwin's conviction and dismissal.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in finding Officer Fraser's affidavit established a "connection" "between drug use" and "other crimes."

2. The trial court erred in concluding the warrant was supported by probable cause to search the van, including all containers therein, for all items listed in the warrant.

3. The trial court erred in concluding the warrant was not overbroad.

Issues Pertaining to Assignments of Error.

1. The affidavit made no statement regarding any connection between drug use and other crimes. The trial court found the affidavit established such a connection. Was the court's finding inaccurate and unsupported by substantial evidence?

2. The affidavit listed generalities regarding the types of evidence found in vehicle prowls, Irwin's passenger's drug possession, and the criminal records of the parties, but no particularized suspicions that Irwin was using drugs or engaged in criminal activity. Did the affidavit establish probable cause to search the contents of Irwin's backpack in the vehicle?

3. The warrant authorized a search for several broad categories of evidence within the vehicle, including a search of all items related to evidence of theft. Was the warrant unconstitutionally overbroad?

4. The only evidence relied on by the State at trial was the baggie of methamphetamine found in Irwin's backpack during execution of the warrant. Must Irwin's conviction be reversed and the case dismissed?

C. STATEMENT OF THE CASE

1. Charge & Suppression Motion

The Clark County Prosecutor's Office charged Irwin with one count of Violation of the Uniform Controlled Substances Act (VUCSA) for possession of methamphetamine. RP 27, 72; CP 4, 40.

To support the charge, the State relied on evidence obtained by execution of a warrant to search the van Irwin had been driving. Supp. CP \_\_\_\_ (Sub. no. 31, State's Response to Defendant's Motion to Suppress Evidence (hereinafter "State's Motion"), 13-14).<sup>1</sup>

The warrant application was supported by Officer Fraser's affidavit, which asserted the following. CP 16-21.<sup>2</sup>

Fraser stopped Irwin for driving without a seat belt. CP 17. While approaching the vehicle, Fraser noted observed two "BMX style bicycles,"

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<sup>1</sup> Pages 13-14 of the State's Motion contain the search warrant and are provided as Appendix A to this brief.

<sup>2</sup> The warrant application is provided as Appendix B to this brief.



and “a variety of other items” including a car stereo and two large car speakers, a tool box and tools, and a laptop and electronic tablet. CP 17.

Fraser stated, “The items were suspicious to me.” CP 18. He believed Irwin and his passenger “appeared too old” to be the owners of the “BMX style bicycles.” CP 19. In addition, “[b]ased on [his] training and experience” the items in the van “all appeared consistent with items often taken in auto prowls or thefts.” CP 18.

Fraser asked Irwin for his license and registration, and then for the vehicle registration and insurance. CP 19. Irwin picked up one black leather men’s wallet and pulled out an ID card, but then put it back stating “that’s not me.” CP 19. Fraser noted the ID card was for a male, but did not see details. CP 18. When questioned, Irwin explained “oh, that’s my friend.” CP 18. Irwin looked around again for a wallet and “then stated that he must not have anything with him.” CP 18. Irwin produced the vehicle registration and an expired insurance card, explaining the vehicle belonged to his friend Brian. CP 18.

At some point before submission of the warrant application, the van was identified as registered to Brian Hall. CP 16.

Irwin provided his true name and date of birth, and asked if he could put a shirt on if he was going to be arrested for driving with a suspended license. CP 18. Fraser searched Irwin’s name and saw he had a suspended

license (first degree), an outstanding warrant for theft III, and a felony conviction for criminal impersonation. CP 18.

Fraser returned to arrest Irwin. CP 18. Irwin again asked to put a shirt on, but Fraser ordered him out of the car. CP 18. Irwin stepped out of the van holding a shirt over his front, but was otherwise without any clothing. CP 18. He explained he was running late to court. CP 18. Fraser allowed him to put on clothing and then arrested him. CP 18. A search incident to arrest yielded nothing of interest. CP 18.

Fraser asked Irwin for consent to search the vehicle explaining he suspected items were stolen. CP 18. Irwin stated “nothing is stolen it’s all [mine]” and gave consent for a search. CP 18.

During this interaction, Irwin’s front seat (and only) passenger, Shelby Cahill, appeared “very nervous,” and “fidgety” and “wouldn’t make direct eye contact.” CP 18. After Irwin was arrested, officers approached Cahill and observed her pupils were “very constricted” in a manner inconsistent with lighting conditions, and her top teeth were missing. CP 18. Upon request, she provided her Washington identification card showing she was 24 years old. CP 18. Fraser stated he was “surprised.” CP 18. Based on her appearance and on Irwin’s age, he had “thought she was quite a bit older.” CP 18. A check of her name revealed a felony conviction for possession of controlled substance with intent to deliver. CP 19.

Cahill identified the following property as belonging to her: a jacket, a sweatshirt, and a backpack all located behind the passenger seat, as well as one of the BMX bikes. CP 19. She complied with officer requests to step out of the van and to submit to a search of her backpack. CP 18. Fraser noted the backpack was “purple and green multicolored” and “looked like it would belong to a female.” CP 19. Officers found a jar of methamphetamine in an amount that “clearly far exceeded normal personal use,” two glass pipes, a scale and \$341 in cash in her backpack, as well as dentures consistent with her missing upper teeth. CP 19. She was then arrested. CP 19.

After her arrest, officers asked her if anything else in the van belonged to her. CP 19. She “reiterated that one of the bicycles that [was] in the van was hers and identified which one by some accessories she had on it.” CP 19. She also stated she had a Bluetooth speaker near the center of the van. CP 19.

With both occupants of the van now arrested, Fraser continued the search. CP 19. He observed a suitcase and a second backpack, both of which appears to contain additional items, “something covered up by a bedspread near the rear passenger bench seat,” a car speaker, and “two dark colored leather men’s wallets sitting on the center console.” CP 19. Irwin then revoked consent and the search ceased. CP 19.

The affidavit detailed Officer Fraser's training and experience, stating, "I have conducted numerous investigation and completed arrests and/or assisted with numerous arrests for burglary, theft, possession of stolen property and drug offenses." CP 17.

The affidavit also stated,

Based on the amount of items in the van consistent with auto prowls and/or thefts (electronics and tools), the suspicious wallet with someone else's identification, the unknown contents of the suitcase and the backpacks, the substantial amount of drugs found in Shelby's possession and the criminal histories of both individual[s] involved, I suspected that the van likely contained additional drugs and/or paraphernalia and stolen items. ...

CP 20.

On the basis of this affidavit, the magistrate issued a warrant to search the van (including any locked storage containers inside) for the following broad categories of evidence: controlled substances, drug paraphernalia, "[a]ny items to show domain and control of the vehicle ... [,]" as well as "any other items of evidence specifically related to the crime(s) of Theft II – RCW 9A.56.040, Possession of Stolen Property – RCW 9A.56.140, Identity Theft – RCW 9.35.020," and drugs or drug paraphernalia. Supp. CP \_\_\_\_ (Sub. no. 31, State's Motion, 13-14).

Officers executed the warrant and discovered Irwin's black and orange backpack located directly behind the driver's seat where he had been seated. RP 169-70. They searched Irwin's backpack and discovered a

baggie of methamphetamine, a pipe with a crystal substance on it, men's toiletries, and mail addressed to Irwin. RP 169-70, 174.

Irwin moved to suppress all evidence flowing from the execution of the search warrant, including all items discovered in the van and all related testimony. CP 6-15. Irwin argued the warrant should not have been issued because it was overbroad, and the affidavit failed to establish probable cause, relied too heavily on the officer's general statements of criminal behavior, and failed to establish a nexus between criminal activity and Irwin or his backpack. RP 14-17; CP 9, 11, 12.

The State disagreed, arguing the affidavit supported probable cause for two broad categories of crimes: theft crimes (including theft, identity theft, and possession of stolen property) and drug crimes (including possession of controlled substances, possession of drug paraphernalia, and related crimes). RP 17-20.

The trial court ruled the magistrate did not abuse his discretion and the affidavit established probable cause to search the vehicle for evidence related to crimes of theft (including automobile theft), identity theft, and controlled substances. RP 26; Supp. CP \_\_\_\_ (Sub. no. 31, State's Motion, 13-14).

The court reasoned that in the officer's training and experience, the items observed in the vehicle were consistent with auto prowls or thefts. RP

23. The court also reasoned that based on the relationship between Irwin and his passenger, supported by the fact that he was on his way to court, methamphetamine found in his passenger's backpack established a sufficient nexus to justify a search of the vehicle and Irwin's personal items within it. RP 23-24. The court also reasoned, "There is a connection, though, that's been identified within the affidavit between drug use, other crimes. It could be involved here getting into the property crimes." RP 23. The court also considered the evidence of two men's wallets, one of which Irwin had claimed belonged to his friend, Brian. RP 23-25. Finally, the court pointed to other items in the van that the officer could not observe, including "something covered up by a bedspread." RP 25.

## 2. Jury Trial & Sentence

During Irwin's jury trial, the State presented officer testimony, photographs, and the items themselves to establish that the baggie of powder was found inside Irwin's backpack behind the driver's seat. E.g. RP 169-70, 174. Officer Fraser testified that he also found two additional items with a white crystal substance on them: a clear glass pipe found inside the black and orange backpack, and a box found on the front passenger seat near to the original location of Cahill's backpack. RP 187-88 (both items in an envelope together as Exh. 25). However, neither of these two items were submitted to the lab for drug testing. RP 188. Officers testified that

all of these items were discovered when the search warrant was executed, the day after the traffic stop. RP 169-70, 174.<sup>3</sup>

A laboratory technician testified that he was sent two evidence envelopes for testing, but ultimately only tested the baggie. RP 213, 219. The baggie tested positive for methamphetamine. RP 213, 219.

Irwin did not testify. RP 306. His passenger, Cahill, testified that the baggie and pipe were hers, but she had slipped them into Irwin's backpack behind the driver's seat to avoid police detection. RP 286-89. The jury was instructed on the defense of unwitting possession. RP 349; CP 11.

The prosecutor elected to rely only on the baggie found in Irwin's backpack, not the pipe or box, to support the drug possession charges, and the jury was instructed accordingly. RP 349, 357; CP 33, 36.

The jury found Irwin guilty of possession of a controlled substance — methamphetamine. CP 40. Irwin was sentenced to serve 18 months of incarceration and 12 months of community custody, to complete a chemical dependency evaluation and treatment, and to pay legal financial obligations. CP 63-64. He timely appeals. CP 64.

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<sup>3</sup> Officers had conducted a partial search of the van at the scene pursuant to Irwin's consent. RP 52. Irwin then revoked his consent and the search was halted. RP 55. It appears no evidence from this initial search was relied upon to support the charge of possession of methamphetamine. RP 52, 55, 349, 357.

D. ARGUMENT

THE VEHICLE SEARCH WARRANT WAS INVALID.

The Fourth Amendment of the U.S. Constitution provides, “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause...” Article I, section 7 of the Washington Constitution provides, “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

It is well established that Article I, section 7 is more protective than the Fourth Amendment, particularly in the context of vehicle searches. State v. Parker, 139 Wn.2d 486, 493, 987 P.2d 73 (1999); e.g. State v. Snapp, 174 Wn.2d 177, 181, 187, 275 P.3d 289 (2012) (Art. I, §7 protections are “qualitatively different” than Fourth Amend. protections, and rejecting federal automobile exigency exception).

On appeal, the validity of a search warrant is reviewed de novo, “because the superior court at a suppression hearing ‘acts in an appellate-like capacity.’” State v. Youngs, \_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_, 2017 WL 2839776, \*2 n.11 (2017) (quoting State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008)); also State v. Keodara, 191 Wn. App. 305, 312, 364 P.3d 777 (2015).



While appellate courts “give great deference to the magistrate, that deference is not unlimited.” State v. Lyons, 174 Wn.2d 354, 362, 275 P.3d 314 (2012). “[T]he [reviewing] court must still insist that the magistrate perform his ‘neutral and detached’ function and not serve merely as a rubber stamp for the police.” Aguilar v. Texas, 378 U.S. 108, 111, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964) (quoting Johnson v. U.S., 333 U.S. 10, 13-14, 68 S. Ct. 367, 92 L. Ed. 436 (1948)).

A magistrate is permitted to make inferences; however, those inferences must be supported by facts established in the affidavit. Lyons, 174 Wn.2d at 363 (citing State v. Maddox, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004)). Where the affidavit provides no “substantial basis for determining probable cause,” the reviewing court may not defer to the magistrate. Lyons, 174 Wn.2d at 363 (citing U.S. v. Leon, 468 U.S. 897, 915, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984)).

Here, the vehicle search warrant was issued in violation of Irwin’s constitutional rights because it was (1) unsupported by probable cause, and (2) overbroad. (3) Neither error was harmless. Irwin’s conviction must be reversed and the charges dismissed with prejudice.

1. The search warrant was not supported by probable cause.

Under both the Washington and U.S. constitutions, a search warrant may issue only if supported by probable cause. Lyons, 174 Wn.2d at 359

(citing Wash. Const. art. I, sec. 7; U.S. Const. amend. IV). The test for probable cause under Article I, section 7 is more protective than its federal counterpart. E.g. State v. Jackson, 102 Wn.2d 432, 443, 688 P.2d 136 (1984) (retaining two-prong requirements test and rejecting totality of the circumstances test of Illinois v. Gates, 462 U.S. 213, 230, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)).

A warrant must be supported by an affidavit that “particularly identifies the place to be searched and items to be seized.” Lyons, 174 Wn.2d at 359. To establish probable cause, the affidavit must “set forth sufficient facts to convince a reasonable person of the probability the defendant is engaged in criminal activity and that evidence of criminal activity can be found at the place to be searched.” Id. at 359 (citing Maddox, 152 Wn.2d at 509). This requires ““circumstances going beyond suspicion and mere personal belief.”” State v. Seagull, 95 Wn.2d 898, 907, 632 P.2d 44 (1981) (quoting State v. Patterson, 83 Wn.2d 49, 58, 515 P.2d 496 (1973)).

Here, Officer Fraser’s affidavit (i) improperly relied on conclusory statements and generalities regarding criminal behavior, and (ii) failed to establish a nexus between evidence of Cahill’s criminal conduct and the specific place to be searched. (iii) When exculpatory facts are considered,

the remaining evidence is insufficient to establish probable cause to search the vehicle and Irwin's backpack inside the vehicle.

*i. Conclusory statements and generalities of criminal behavior do not establish probable cause.*

Officer Fraser's conclusory statements, and generalities regarding the habits of thieves and drug users, did not establish probable cause to search the vehicle or to search Irwin's backpack inside the vehicle.

“‘[P]robable cause requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched.’” State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999) (quoting State v. Goble, 88 Wn. App. 503, 509, 945 P.2d 263 (1997) (citing Wayne R. LaFave, Search and Seizure § 3.7(d), at 372 (3d ed.1996))). “General, exploratory searches are unreasonable, unauthorized, and invalid.” Thein, 138 Wn.2d at 149 (citing State v. Helmka, 86 Wn.2d 91, 93, 542 P.2d 115 (1975)).

The affiant must provide underlying facts and circumstances; “[c]onclusory statements alone are unacceptable” because they “usurp[] the function of the detached and impartial magistrate.” State v. Stephens, 37 Wn. App. 76, 79-80, 678 P.2d 832 (1984). General statements regarding the habits of people who commit certain types of crimes, even if based on

an officer's training and experience, do not establish probable cause. Thein, 138 Wn.2d at 140.

In Thein, the Court considered an affidavit in support of a warrant to search Thein's residence for evidence of drug dealing. Id. at 140. Specifically at issue was whether "generalizations regarding the common habits of drug dealers" were sufficient to establish probable cause to search a suspected drug dealer's residence, and if not, whether the remaining facts in the affidavit were enough. Id.

Only the most tenuous of connections linked Thein's residence to unlawful drug activity. During a search of another residence that uncovered a marijuana grow operation, police found a box of nails labeled with Thein's residential address. Id. at 137. Information provided by other witnesses who identified Thein as a drug supplier led police to learn Thein's full name. Id. at 137-38. His Department of Licensing record provided his residential address. Id. at 138.

The State argued evidence had established probable cause to believe Thein was a drug supplier. Id. at 139-41. Based on officer training and experience, drug dealers often kept in their residence evidence of drug dealing, such as drug inventory and paraphernalia, large quantities of cash, financial records of drug dealing activities, and firearms and ammunition. Id. at 138-39. The State argued this established the required nexus between

the items sought and the place to be searched, and supported probable cause to search Their's residence for evidence related to drug crimes. Id. at 141. The Court of Appeals upheld the warrant, reasoning the box of nails with Their's address provided the nexus because it was discovered at a separate residence that contained drugs. Id. at 140-41.

The Washington Supreme Court rejected State's reasoning and "the proposition [that] it is reasonable to infer evidence of drug dealing will likely be found in the homes of drug dealers." (abrogating State v. O'Neil, 74 Wn. App. 820, 879 P.2d 950 (1994)). The Court concluded "[b]lanket inferences of this kind substitute generalities for the required showing of reasonably specific underlying circumstances that establish evidence of illegal activity will likely be found in the place to be searched in any particular case." Id. at 147-48 (internal quotation omitted).

Here, the trial court reasoned the Officer Fraser's affidavit had established a "connection" "between drug use" and "other crimes" including "property crimes." RP 23. This was factually inaccurate. The affidavit contains no statement asserting such a connection. CP 16-21. Where the trial court's analysis is reviewed de novo, this Court should disregard the trial court's unsupported factual finding.<sup>4</sup> Youngs, 2017 WL

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<sup>4</sup> The trial court's improper factual finding was also not supported by "substantial evidence," and should be stricken for this reason as well. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994) ("Substantial evidence exists where there is a sufficient quantity

2839776, \*2 n.11 (quoting Neth, 165 Wn.2d at 182); also Keodara, 191 Wn. App. at 312.

Even if the affidavit had made such an assertion—that persons who use drugs have a habit of committing other crimes—this would have been precisely the type of generalization the Thein Court held could not be used to support probable cause. Thein, 138 Wn.2d at 140.

Fraser’s affidavit does state that “[b]ased on [his] training and experience” the items in the van, particularly “electronics and tools” and based on the “amount of items,” this “appeared consistent with items often taken in auto prowls or thefts.” CP 18, 20. This statement amounts to a generality regarding the types of items typically taken by those who steal from automobiles. The affidavit lacks any particularized statement explaining why the officer believes these items are stolen, or why he might believe they were stolen by Irwin, justifying an intrusion into his backpack. This is an improper generalization that the court should have excluded from its analysis of probable cause. Thein, 138 Wn.2d at 140.

The officer also cites to “the unknown contents of the suitcase and the backpacks.” CP 20. However, this statement adds nothing to the

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of evidence in the record to persuade a fair-minded, rational person of the truth of the finding.”).

analysis of probable cause. The mere fact that the contents are unknown cannot, as a matter of logic, contribute to a finding of probable cause.

*ii. Evidence of his passenger's drug use do not establish a nexus to the vehicle or Irwin's possessions therein.*

Evidence that Cahill used, delivered and possessed illegal drugs in her personal backpack did not establish a nexus to the vehicle as a whole or support probable cause to search Irwin's backpack in the vehicle.

The affidavit relied on "the substantial amount of drugs found in Shelby's possession and the criminal histories of both individual[s] involved" to support the assertion of probable cause to search the vehicle and all containers within. CP 20. The trial court further reasoned the search was justified on the basis of the relationship between Irwin and his passenger, as established by the fact that they were traveling together in a vehicle, and court was his destination. RP 23-24.

In Parker, the Washington Supreme Court considered three consolidated cases and held that where officers lacked individualized suspicion of the passengers of a vehicle, a search of the passengers' personal belongings was not supported merely on the basis of their relationship or proximity to the drivers. 139 Wn.2d at 489.

In the case of Parker, after arresting the driver, officers observed an open containing of alcohol in the vehicle. Id. at 489-90. Officers contacted

the passenger, Parker, to inquire about her sobriety and determine if the vehicle could be released to her. Id. at 489-90. They then asked her about cash they observed on top of her purse, were persuaded that the cash and purse did belong to her, then searched the purse and found illegal drugs. Id. at 490.

In the case of Jines, officers stopped a vehicle for an improper left turn and then arrested the driver upon discovering he had a suspended license. Id. at 490. Jines was not wearing his seatbelt and produced identification from his jacket. Id. at 491. Officers ordered him out of the vehicle and told him not to take anything. Id. He complied, leaving his jacket. Knowing the jacket belonged to Jines, officers searched the vehicle and his jacket, and found a box of methamphetamines in his jacket. Id.

Similarly, in the case of Hunnel, the vehicle was stopped for an unrelated wanted person search, and the driver, her husband, was arrested on an outstanding warrant. Id. at 491. She produced identification from her purse and was then ordered out of the vehicle while the officer conducted a search. Id. While searching the vehicle, officers also searched the contents of her purse and found illegal drugs. Id. at 492.

In all three cases, the search of the vehicle generally was held to be lawful pursuant to the version of the search incident to arrest exception recognized at that time. Id. at 490-92.



The Court observed that Article I, section 7 provides for individuals to retain an “independent, constitutionally protected privacy interest” that “is not diminished merely upon stepping into an automobile with others.” Id. at 496. The Court concluded that the personal belongings of passengers could not be considered “containers” within the vehicle, or be considered searchable regardless of who they belonged to. Id. at 496. The search of items known to belong to the passengers could not be made on the mere basis of their association with or proximity to the driver. Id. at 497.

The Court also observed that “readily recognizable personal effects are protected from search to the same extent as the person to whom they belong,” and such items “need not be worn or held to fall within the scope of protection.” Id. at 498-99 (citing Hill, 123 Wn.2d at 644; State v. Worth, 37 Wn. App. 889, 892-94, 683 P.2d 622 (1984)).

Here, the circumstances are the mirror image of those considered in Parker. Officers searched Irwin’s backpack, a personal item within the vehicle, and an item they knew belonged to Irwin and not to Cahill, and attempted to justify the search on the basis of his passenger’s drug use and possession. See RP 169; CP 18. The court reasoned that Irwin’s association with Cahill was sufficient to authorize a search into Irwin’s personal effects. RP 23-24. Parker does not permit such guilty-by-association reasoning. The court’s reasoning also requires an inferential leap: because Cahill is a

drug user and drug dealer, and drug users and dealers often associate with one another, Irwin is likely a drug user and a search of his personal items will reveal this. Thein holds that such generalities about the habits of drug users cannot support probable cause. Thein, 138 Wn.2d at 140.

Where Cahill was a passenger, evidence showing she was a drug dealer—including her criminal history, physical appearance, behavior, and items discovered in her purse—is insufficient to establish a nexus to search the entire vehicle, much less Irwin’s personal effects in his backpack inside the vehicle. See Parker, 139 Wn.2d at 489, 496-99; Thein, 138 Wn.2d at 140.

iii. *Evidence tending to dispel suspicion may not be ignored.*

As discussed above, Officer Fraser’s conclusory statements and generalities regarding criminal behavior contribute little to the analysis, and evidence of Cahill’s drug use did not support probable cause to search the vehicle as a whole or Irwin’s backpack in particular. The proper inquiry becomes whether remaining facts asserted in the affidavit are sufficient to establish probable cause. See Thein, 139 Wn.2d at 149-50.

Of the remaining evidence, the only facts potentially creating suspicion were (a) the bicycles appeared to be for younger people, (b) Irwin had two men’s wallets in the vehicle, and (c) Irwin was unclothed. CP 20.

However, during the course of his investigation, Officer Fraser gained additional information that provided plausible non-criminal reasons for each of these facts.

As proven by her Washington identification card, Cahill was significantly younger than she appeared. CP 18. In addition, she identified a Bluetooth speaker and one of the bicycles in the vehicle as hers, and described the bicycle by its attached accessories. CP 19. This tended to dispel suspicion the bicycles or electronics were stolen. Irwin explained the other wallet belonged to his friend, and stated the vehicle was his friend, Brian's. CP 18-19. At some point, officers did confirm the vehicle was registered to Brian Hall. CP 16. This tended to dispel suspicion that the vehicle or wallet was stolen. Irwin explained he was late to court – suggesting that he was attempting to change on the way. CP 18. He also appeared to have reservations about stepping out of the vehicle without additional clothing – suggesting he was not under the influence of illegal drugs, and was fully aware of his lack of clothing. CP 18. Unlike his passenger Cahill, Officer Fraser made no note of constricted pupils or other evidence suggesting Irwin was under the influence of drugs. CP 17-18. This dispels suspicion that Irwin was using or in possession of illegal substances.

These additional facts tended to dispel suspicion that the bicycles, wallet, electronics or vehicle were stolen, or that Irwin was under the

influence or in possession of illegal drugs. When evaluating probable cause, evidence tending to dispel suspicion cannot be ignored. U.S. v. Lopez, 482 F.3d 1076, 1073-74 (9th Cir.2007) (holding continued arrest was unlawful where probable cause had dissipated) (citing U.S. v. Ortiz-Hernandez, 427 F.3d 567, 574 (9th Cir.2005), cert. denied, 549 U.S. 876, 127 S. Ct. 358, 166 L. Ed. 2d 132 (2006)). There was no particularized evidence remaining to support a belief that the wallets, vehicle, bicycles, electronics or other items were stolen, or that Irwin was in possession of drugs or drug paraphernalia.

Here, when additional facts tending to dispel suspicion are considered, the affidavit do not support probable cause to search the vehicle or Irwin's backpack inside the vehicle.

2. The search warrant was overbroad.

In addition to lacking proper support to establish probable cause, the warrant was overbroad.

The Fourth Amendment requires that "a warrant must describe with particularity the things to be seized." State v. Higgins, 136 Wn. App. 87, 91, 147 P.3d 649 (2006) (citing Groh v. Ramirez, 540 U.S. 551, 557, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004); State v. Riley, 121 Wn.2d 22, 28, 846 P.2d 1365 (1993). Particularity "serves two functions," "limiting the executing officer's discretion' and "informing the person subject to the

search what items may be seized.” Id. (quoting Riley, 121 Wn.2d at 29, 846 P.2d 1365). A warrant authorizing a search for evidence of particular crime, involving a general category, that fails to reference with particularity the types of items to be seized, is overbroad in violation of the Fourth Amendment. Higgins, 136 Wn. App. at 93-94.

Three factors are relevant to determine whether a warrant is overbroad:

“(1) whether probable cause exists to seize all items of a particular type described in the warrant, (2) whether the warrant sets out objective standards by which executing officers can differentiate items subject to seizure from those which are not, and (3) whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued.”

Higgins, 136 Wn. App. at 91-92 (quoting U.S. v. Mann, 389 F.3d 869, 878 (9th Cir.2004) quoting U.S. v. Spilotro, 800 F.2d 959, 963 (9th Cir.1986))).

The warrant at issue in Irwin’s case suffers from two flaws. First, as discussed above, it lacks probable cause to support a search of the van, and Irwin’s backpack in particular, for all items and categories listed. Second, it fails to set forth objective standards to instruct officers on which items may be seized and which may not.

In Higgins, officers obtained a search warrant for a residence authorizing the seizure of “certain evidence of a crime, to-wit: ‘Assault 2nd DV’ RCW 9A.36.021.” Higgins, 136 Wn. App. at 90. An affidavit attached

to the warrant described the incident and established probable cause to seize a gun, spent casings, bullets, and entry and exit points of the bullets. Id. The items described in the affidavit were recovered and the defendant was convicted of assault. Id.

The court noted the officer's affidavit could and did specify the items sought with greater particularity than the warrant; the officer was searching for a pistol, bullets, spent casings, and the exit and entry holes of the bullet. Id. at 90. However, the warrant itself, though attached to the affidavit, did not incorporate the affidavit by reference, and so could not rely on this limitation to cure the overbreadth. Id. at 92.

The warrant authorized a search for "certain evidence of a crime, to-wit: 'Assault 2nd DV' RCW 9A.36.021." Id. at 90. The Higgins Court noted there were several ways to commit the crime of assault-DV; thus the search could encompass items as varied as substances that could be used as poison, evidence of the victim's pregnancy, or any item that could be used as a deadly weapon. Id. at 93. In contrast, a search for drugs or child pornography could rely on a general reference to the statute, because such a search was by its nature limited to illicit items that could be seized in plain view pursuant to any lawful search. Id. at 93-94. However, a search for evidence of domestic violence could include any number of otherwise innocuous items, and provided the officer with no guidance on how to

differentiate between items that could be seized and those that could not. Id. at 94. A warrant for such a search would potentially allow officers to seize items despite lacking probable cause. Id. Thus, the warrant was overbroad and required suppression of any resulting evidence. Id. at 94-95.

The warrant at issue in the case at bar authorized a search of the vehicle, including a search of any containers inside, for the following broad categories: controlled substances, drug paraphernalia, “[a]ny items to show domain and control of the vehicle ... [,]” and “any other items of evidence” related to the crimes theft, possession of stolen property, identity theft or possession of drugs or drug paraphernalia.” Supp. CP \_\_\_\_ (Sub. no. 31, State’s Motion, 13-14).

The authority to search for “any other items of evidence” related to theft crimes is overbroad. Supp. CP \_\_\_\_ (Sub. no. 31, State’s Motion, 13-14). Just as the reference to second degree assault-DV in Higgins, the reference to theft here is not sufficiently limiting. A reference to the theft statute provides even less guidance to an officer than a reference to the second degree assault statute because any conceivable item can be stolen. As a result, the warrant granted the officers the ability to seize virtually any items discovered in the vehicle, without requiring any showing of probable cause that the item was involved in a theft. Such untethered officer discretion undermines the two functions of the warrant requirement:

limiting officer discretion and providing notice to the subject of the warrant regarding the types of items authorized for seizure. Higgins, 136 Wn. App. at 91 (citing Riley, 121 Wn.2d at 29).

Where the warrant authorized officers to search a virtually unlimited category of items, it was constitutionally overbroad. Higgins, 136 Wn. App. at 94. “Neither the officer’s personal knowledge of the crime nor a proper execution of the search may cure an overbroad warrant.” Id. at 91 (citing Riley, 121 Wn.2d at 28). Thus, even if this Court finds the search warrant was, for example, properly issued for a search of drugs, and officers properly searched only in places where drugs could be hidden, the inclusion of overly broad categories such as evidence of theft cannot be cured. Higgins, 136 Wn. App. at 91, 94.

Where a warrant is found to be overly broad, suppression of evidence discovered through execution of the warrant is required. Riley, 121 Wn.2d at 30.

3. The proper remedy is reversal and dismissal.

Where on appeal a warrant is found to lack the support of probable cause, the proper remedy is suppression of all evidence discovered through the tainted search. State v. Dalton, 73 Wn. App. 132, 140-41, 868 P.2d 873 (1994). Overbreadth independently requires suppression. Riley, 121 Wn.2d at 30. Where the only evidence of drug possession relied upon at



trial is suppressed, the proper remedy is to reverse the conviction and dismiss with prejudice. Compare id. (reversing), State v. Rangitsch, 40 Wn. App. 771, 780-81, 700 P.2d 382 (1985) (reversing); Riley, 121 Wn.2d at 30 (reversing); with Keodara, 191 Wn. App. at 318 (declining to reverse where remaining evidence was overwhelming).

Here, the State elected to rely only on the baggie of methamphetamine discovered in Irwin's backpack during execution of the warrant. RP 349, 357. Without this evidence, the conviction cannot stand. Reversal and dismissal is the appropriate remedy. Dalton, 73 Wn. App. at 140-41; Rangitsch, 40 Wn. App. at 780-81.

E. CONCLUSION

The warrant was issued improperly because it lacked probable cause to support a search of the vehicle, and Irwin's backpack in particular, for the listed categories of items. It was also overbroad, particularly in its reference to evidence of theft.

Irwin respectfully requests that this Court reverse his conviction for unlawful possession and dismiss the charge.

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DATED this 31<sup>st</sup> day of July, 2017.

Respectfully submitted,

NIELSEN BROMAN & KOCH, PLLC.

A handwritten signature in cursive script, appearing to read "E. Rania Rampersad", written over a horizontal line.

E. RANIA RAMPERSAD,

WSBA NO. 47224

Office ID No. 91051

Attorneys for Appellant

## APPENDIX A:

Warrant to Search the Vehicle

Supp. CP \_\_\_\_ (Sub. no. 31, State's Response to Defendant's

Motion to Suppress Evidence, 13-14)

## Battle Ground Police Department

CASE NUMBER  
GO 21 2016-1353BATTLE GROUND MUNICIPAL COURT  
STATE OF WASHINGTONSTATE OF WASHINGTON.  
Plaintiff

V.

Defendant(s)

Irwin, Jesse M 10/09/74  
Cahill, Shelby L 09/10/92~~TELEPHONIC~~

## SEARCH WARRANT

155 me 0 By E-mail /  
#16-1353-01

The people of the State of Washington, to any Sheriff, Police Officer, or Peace Officer in Clark County: Proof by written affidavit, under oath, made in conformity with the State of Washington Criminal Rules for Courts of Limited Jurisdiction, rule 2.3, having been made to me this day by Battle Ground Police Officer Clint Fraser that there is probable cause for the issuance of a search warrant on the grounds set forth in the State of Washington Criminal Rules for Courts of Limited Jurisdiction, rule 2.3, Section (c).

You are therefore commanded, with the necessary and proper assistance, to make a diligent search, good cause having been shown therefore, of the following described property.

PROPERTY TO BE SEARCHED:

a) The vehicle to be searched is a gold, full size Ford Club Wagon passenger van, bearing Washington license plate "ANY7907" and VIN:1FMRE1165WHB55778. It is registered to a Brian P. Hall at 39 Essex Dr in Kelso, WA 98626. The vehicle is a large passenger van with light gray bumpers and matching grill. The van is distinctive as it has several large dings on the right and left rear doors (at the very back of the vehicle). The vehicle is currently secured in a restricted access yard at the Battle Ground Public Works facility.

The search is to include all portions of the vehicle including the interior and exterior of the vehicle.

FOR THE FOLLOWING PERSON/PROPERTY:

1. Controlled substances to include, but not limited to methamphetamine, heroin, cocaine or prescription medications;
2. Drug paraphernalia to include, but not limited to smoking pipes, wrappers, plastic baggies, electronic or digital scales, or any other device which may be used for the consumption or ingestion of drugs;
3. Any items to show domain and control of the vehicle to include but not limited to identification, mail, credit or bank cards, receipts of purchases with the defendant(s)'s names, paycheck stubs, or other papers including the defendant(s)'s name(s).;
4. Access to any locked storage container which can be used for securing or concealing evidence sought;

SEARCH WARRANT EXECUTION: DATE: 7/15/16 HOUR: 1530 BY: C. FRASER

Battle Ground Police Department

CASE NUMBER  
GO 21 2016-1353

BATTLE GROUND MUNICIPAL COURT  
STATE OF WASHINGTON

5. And any other items of evidence specifically relating to the crime(s) of Theft II - RCW 9A.56.040, Possession of Stolen Property - RCW 9A.56.140, Identity Theft - RCW 9.35.020, Possession of a Controlled Substance - RCW 69.50.401 and Possession of Drug Paraphernalia - RCW 69.50.412.

AND TO SEIZE THEM IF FOUND and bring them forthwith before the Court according to law.

This Search Warrant was issued this 15 day of July, 2016, at 10:01 PM 2:00 PM pm.

By the Honorable George C. Johnston  
Judge of the Municipal Court of Battle Ground  
County of Clark  
State of Washington

SEARCH WARRANT EXECUTION: DATE: 2/15/16 HOUR: 1:58 BY: C. PRATER

## APPENDIX B:

Officer Fraser's Warrant Application

CP 16-21

## IMAGE ATTACHMENT (852535) WARRANT DOCUMENTATION

BATTLE GROUND MUNICIPAL COURT  
STATE OF WASHINGTONSTATE OF WASHINGTON,  
Plaintiff

V.

Defendant(s)  
Irwin, Jesse M 10/09/74  
Cahill, Shelby L 09/10/92

) TELEPHONIC  
 ) WARRANT # 16-1353-01  
 )  
 ) AFFIDAVIT FOR SEARCH WARRANT  
 ) FOR EVIDENCE OF A CRIME, TO WIT:  
 )  
 ) Theft II  
 ) RCW 9A.56.040  
 ) Possession of Stolen Property II  
 ) RCW 9A.56.160  
 ) Identity Theft  
 ) RCW 9.35.020  
 ) Possession of a Controlled Substance  
 ) RCW 69.50.401  
 ) Possession of Drug Paraphernalia  
 ) RCW 69.50.412

1  
 2 I, Officer Clint Fraser, being duly sworn and upon oath, depose and say—  
 3

4 I am a duly appointed, qualified, and acting law enforcement officer for the Battle Ground Police  
 5 Department. I am charged with the responsibility for the investigation of criminal activity occurring  
 6 within the City of Battle Ground, Clark County, Washington, and have probable cause to believe, and do,  
 7 in fact, believe, that evidence of the crime(s) of: Possession of Stolen Property - RCW 9A.56.140, Theft II  
 8 - RCW 9A.56.040, Identity Theft - RCW 9.35.020, Possession of a Controlled Substance - RCW  
 9 69.50.401 and Possession of Drug Paraphernalia - RCW 69.50.412.

10  
 11  
 12 **PROPERTY TO BE SEARCHED:**  
 13

14 a) The vehicle to be searched is a gold, full size Ford Club Wagon passenger van, bearing  
 15 Washington license plate "ANY7907" and VIN:1FMRE1165WHB55778. It is registered  
 16 to a Brian P. Hall at 39 Essex Dr in Kelso, WA 98626. The vehicle is a large passenger  
 17 van with light gray bumpers and matching grill. The van is distinctive as it has several  
 18 large dings on the right and left rear doors (at the very back of the vehicle). The vehicle is  
 19 currently secured in a restricted access yard at the Battle Ground Public Works facility.

20  
 21 The search is to include all portions of the vehicle including the interior and exterior of the  
 22 vehicle.  
 23  
 24  
 25  
 26  
 27  
 28  
 29

BATTLE GROUND MUNICIPAL COURT  
STATE OF WASHINGTONFOR THE FOLLOWING PROPERTY:

1. Controlled substances to include, but not limited to methamphetamine, heroin, cocaine or prescription medications;
2. Drug paraphernalia to include, but not limited to smoking pipes, wrappers, plastic baggies, electronic or digital scales, or any other device which may be used for the consumption or ingestion of drugs;
3. Any items to show domain and control of the vehicle to include but not limited to identification, mail, credit or bank cards, receipts of purchases with the defendant(s)'s names, paycheck stubs, or other papers including the defendant(s)'s name(s).;
4. Access to any locked storage container which can be used for securing or concealing evidence sought;
5. And any other items of evidence specifically relating to the crime(s) of Theft II - RCW 9A.56.040, Possession of Stolen Property - RCW 9A.56.140, Identity Theft - RCW 9.35.020, Possession of a Controlled Substance - RCW 69.50.401 and Possession of Drug Paraphernalia - RCW 69.50.412.

EXPERTISE OF AFFIANT:

I am a police officer with the Battle Ground Police Department in the City of Battle Ground, County of Clark and State of Washington. I am currently assigned to motor patrol duties. I have been employed as a police officer since May of 2007. I completed the Washington State Criminal Justice Basic Police Academy in Burien Washington and have received many additional hours of training in investigations and enforcement over the last nine years.

I have conducted numerous investigations and completed arrests and/or assisted with numerous arrests for burglary, theft, possession of stolen property and drug offenses.

PROBABLE CAUSE STATEMENT:

On 07/14/16 at approximately 0809hrs, I was working routine motor traffic patrol. I was parked on E Main St at the intersection with NE Grace Ave. I was facing north and observed a full-size gold Ford van, WA - ANY79017, approaching me, heading southbound on NE Grace Ave. As the driver stopped at the stop sign to make a right turn and head west on E. Main St, I could see that he did not have a shirt or a seatbelt on. There was also a female in the front passenger seat.

Once the driver proceeded west, I pulled out behind the van and conducted a stop on it. While approaching the driver and walking past the van, I noticed that inside the passenger area, there were two bicycles, two large automotive subwoofer speaker boxes, a car stereo, a tool box and a variety of other items. The items were suspicious to me. The BMX style bicycles didn't look like they would belong to

SEARCH WARRANT AFFIDAVIT  
Battle Ground Police Department

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BATTLE GROUND MUNICIPAL COURT  
STATE OF WASHINGTON

1 the driver or passenger, as they seemed too old for these types of bicycles. The car audio components  
2 were sitting in various places in the van, there was also with an electronic tablet, a laptop, tools, etc.  
3 Based on my training and experience, these all appeared consistent with items often taken in auto prowls  
4 or thefts. I then contacted the driver. I advised him that I observed him without a seatbelt on. The driver  
5 apologized and stated that he took it off to change his shirt. The driver also stated that he was running late  
6 for court (in Kelso) and was trying to change for his appearance. During this time, the female passenger  
7 seemed very nervous. She wouldn't make direct eye contact and was fidgety in her seat. I asked the driver  
8 for his license, registration and insurance. He looked around and located a black leather men's wallet. He  
9 pulled out some sort of ID card and stated "that's not me" and briefly showed me the card, but it was too  
10 fast to see who it was on the card. It did notice that it was male however. He then stated, "that's not my  
11 wallet" and set it down nearby. I asked who it was (in the wallet) and the driver replied, "oh, that's my  
12 friend". The driver looked around again for a wallet and then stated that he must not have anything with  
13 him. I asked about the registration and insurance. He stated that the vehicle belongs to his friend Brian  
14 and looked through the van for the paperwork. He located a registration form for the vehicle and an  
15 expired insurance card. I then asked the driver for his name and date of birth. He provided "Jesse Michael  
16 Irwin, 10/09/74". Jesse then asked that if he goes to jail for driving while suspended, if he could put a  
17 shirt on. I told him that we would figure that out in a moment.

18 I returned to my patrol motor and entered Jesse into the call. His DOL return showed that his license was  
19 suspended in the first degree. He had a misdemeanor warrant for his arrest for Theft III and NCIC also  
20 showed that Jesse was a convicted felon for criminal impersonation. I checked the DOL photo for the  
21 Jesse and it matched the driver of the van. I then requested a cover unit and Officers MacPhee and Archer  
22 responded.

23 I had dispatch confirm the warrant and once my cover officers arrived on scene, I contacted Jesse again. I  
24 asked him to step out of the vehicle. Jesse asked again if he could put a shirt on. I told him to step out  
25 first. He complied and stepped out holding a shirt over his genital area. I then realized that the defendant  
26 was completely naked. I advised him that he didn't mention he wasn't wearing pants as well. Jesse  
27 reiterated that he was running late for court. I advised him that driving while suspended to court is a bad  
28 idea. I allowed Jesse to put on his clothing. He was then placed in handcuffs and searched. Nothing of  
29 interest was found. He was seated in Officer MacPhee's patrol vehicle. During this time, the passenger of  
30 the vehicle continued to seem very nervous and fidgety.

31 I then spoke with Jesse and advised him of his Constitutional Rights. He explained that he understood  
32 and agreed to speak with me. I asked for consent to search the vehicle based on the strange items that he  
33 was carrying. I told him that I wanted to make sure that the items were not stolen. Jesse explained that  
34 nothing is stolen it's all his. I advised Jesse of the Ferrier Warnings. He agreed to a voluntary search of  
35 the vehicle. I then asked Jesse if his passenger had a license (to remove the vehicle). He stated that he  
36 wasn't sure and added that he doesn't know if she drives.

37 I then proceeded back to the vehicle and contacted the passenger. I spoke with her briefly at the  
38 passenger side door. I advised her that I was conducting a search of the vehicle. While in close proximity  
39 to the female, I now noticed that she had very constricted pupils, far more constricted than what would be  
40 normal in the current lighting conditions. I also noticed that she seemed to lack her top teeth. I asked the  
41 passenger if she had a license, or ID. She said "yes" and turned around to retrieve something from the  
42 seat behind her. She then provided me with a WA ID card identifying her as Shelby L. Cahill, DOB:  
43 09/10/92. I was surprised that Shelby was only 24 years old. Based on her appearance and considering  
44 Jesse's age, I thought she was quite a bit older. I had Officer MacPhee run Shelby via dispatch. Shelby

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Battle Ground Police Department

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STATE OF WASHINGTON

1 returned as "ID only" and a convicted felon for Possession of a Controlled Substance with Intent to  
2 Deliver.

3 Shelby then stepped out of the van. I asked her if she had any weapons or drugs on her and she stated that  
4 she had a knife. The defendant provided me with a small folding knife from her right pocket. I asked if  
5 she had any other weapons or drugs on her. She replied, "no". I asked if I could check and she agreed.  
6 Officer MacPhee did a pat down of Shelby's clothing and did not locate anything. I then asked Shelby if  
7 there was anything in the vehicle that belongs to her. She stated a backpack, a jacket, a sweatshirt and a  
8 hat. I asked where the items were. Shelby pointed out that the backpack, jacket and sweatshirt were all  
9 on the passenger bench seat just behind where she had been sitting, the hat was on the dashboard. She  
10 also stated that one of the bicycles was hers. I then retrieved a purple and green multicolored backpack  
11 (which looked like it would belong to a female) and black jacket. The two items were located behind the  
12 front passenger seat, sitting on the forward most passenger bench seat. I confirmed that I was holding  
13 Shelby's backpack and she indicated that I was. I asked her if there was anything in her backpack like  
14 weapons or drugs. She replied, "no". I asked her if I could check it. She agreed.

15 I began my check of the backpack in the main compartment of the backpack. I quickly located a  
16 decorative tin container about the size of a thick textbook. I opened the container and located what  
17 appeared to be two glass pipes that I recognized as being used to smoke methamphetamine. I looked in  
18 the "bowl" area of the largest glass pipe and could see a large amount of crystals and powder that I  
19 suspected to be methamphetamine. I then advised Shelby that she was under arrest and placed her in  
20 handcuffs. She was seated nearby. I returned to the backpack where in a side pocket, I located a glass jar  
21 full of a crystal substance that I recognized to be methamphetamine. The jar was just slightly smaller than  
22 my fist. The amount of methamphetamine in the jar clearly far exceeded normal personal use. I then  
23 located a small dark gray digital scale with white crystal flakes on it. In the front pocket of the backpack,  
24 I also located a large sum of cash amounting to \$341. I also located a full denture (teeth), which appeared  
25 consistent with Shelby's missing upper teeth. Considering the drugs, scale, money and other items and  
26 based on my training and experience, it appeared that Shelby may be dealing methamphetamine.

27 I then advised Shelby of her Constitutional Rights and asked her if she understood. She stated that she  
28 did. I asked if she would still like to speak with me. She stated that she may answer some of my  
29 questions. I told Shelby that the backpack I just looked through was hers. I asked if the drugs in the  
30 backpack were hers as well. Shelby mumbled, but didn't really answer. I told her that obviously if it's her  
31 backpack then everything in it is hers. Shelby agreed. I asked if anything else in the vehicle belongs to  
32 her. Shelby reiterated that one of the bicycles that were in the van was hers and identified which one by  
33 some accessories she had on it. Shelby also mentioned that she had a bluetooth speaker with her that was  
34 now near the center console of the van.

35 I returned to the van and opened the rear double passenger door. Inside the van I observed black suitcase  
36 and appeared to have things in it (the front was stretched outward) a car audio amplifier under the  
37 passenger bench seat and another backpack full of contents behind the driver seat. There also appeared to  
38 be something covered up by a bedspread near the rear passenger bench seat. I also thought I noticed two  
39 dark colored leather men's wallets sitting on the center console. Jesse then advised Officer Archer that he  
40 (Jesse) was revoking his consent to the search of the vehicle.

41 I contacted Jesse and asked him what changed. Jesse stated that he didn't know what was going on with  
42 Shelby so he didn't want me to keep looking in the van. I advised Jesse that Shelby was under arrest for  
43 possession of drugs. I proceed to asked Jesse about the items in the van. He stated that everything was his

SEARCH WARRANT AFFIDAVIT  
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1 (subwoofers, amps, tablet, tools, etc) with the exception of one of the bicycles, which belongs to Shelby. I  
2 reminded Jesse that I wanted to make sure that he didn't have any property in the vehicle that wasn't his,  
3 or if there may be more drugs in the vehicle. Jesse proceeded to go back and forth telling me that I can  
4 examine some of the items in the van like the subwoofers and laptop, but didn't want me looking around  
5 the rest of the vehicle. I then ended my contact with Jesse for the moment.

6 I then contacted (BGPD) Detective Kelly and asked if he would like to speak with the Shelby. Detective  
7 Kelly said that he would like to. He arrived on scene a few minutes later and made contact with Shelby.  
8 A moment later, Detective Kelly advised me that Shelby requested an attorney. All questioning ceased.

9 Based on the amount of items in the van consistent with auto prowls and/or thefts (electronics and tools),  
10 the suspicious wallet with someone else's identification, the unknown contents of the suitcase and the  
11 backpacks, the substantial amount of drugs found in Shelby's possession and the criminal histories of both  
12 individual's involved, I suspected that the van likely contained additional drugs and/or paraphernalia and  
13 stolen items. I decided to seize the van in an effort to seek a search warrant for the contents of it.

14 Shelby was then secured in Officer Graves patrol vehicle and transported to BGPD to be housed in a  
15 holding cell.

16 I collected all of the evidence at the scene. I also seized Shelby's cell phone for the application of a search  
17 warrant, in order to seek drug transaction records and communications.

18 Officer MacPhee assisted me in sealing the van with evidence tape. I requested a tow truck and  
19 Chappelles responded.

20 Officers MacPhee and Archer then transported Jesse to the police station where he was placed in a  
21 holding cell.

22 I stayed with the van and escorted it to the Battle Ground Public Works evidence storage facility. It was  
23 secured and the keys remained with me.

24 I then returned to the police station. I had Officers MacPhee and Archer test the crystal substance  
25 contained in the glass jar from Shelby's backpack. Using a NIK field test kit for methamphetamine, the  
26 substance was tested. It provided a positive result. The methamphetamine weighed in at 34 grams total  
27 without the container.

28 I then completed criminal citation #6Z088802 for DWLS and infraction citation #6Z088803 for No  
29 Seatbelt (for Jesse). I completed PC Statements for both Jesse and Shelby and Officer MacPhee assisted  
30 with the completion of the Pre-Book forms. I then transported Jesse and Shelby to CCSO Jail where they  
31 were booked. Jesse was booked on the DWLS I charge and the warrant. Shelby was booked on the PCS-  
32 Meth with Intent to Deliver charge.

33 I, the affiant, hereby request a search warrant be issued for the seizure of said property, from said vehicle  
34 at any time of the day, good cause being shown therefore and the same be brought before this magistrate  
35 or retained subject to the order of the court.  
36  
37  
38

# Battle Ground Police Department

CASE NUMBER  
GO 21 2016-1353

## BATTLE GROUND MUNICIPAL COURT STATE OF WASHINGTON

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Given under my hand and dated 7/15/16

Clint Fraser  
Clint Fraser Battle Ground Police Department

Sworn to and subscribed before me on this 15 day of July, 2016

Roger A Bennett  
Judge of the Municipal Court of Battle Ground  
County of Clark  
State of Washington

Officer Fraser was sworn under  
oath at 10:00 am, 7/15/16, by telephone

Roger A Bennett  
Judge

**NIELSEN, BROMAN & KOCH P.L.L.C.**

**July 31, 2017 - 1:05 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 49572-4  
**Appellate Court Case Title:** State of Washington, Respondent v Jesse Michael Irwin, Appellant  
**Superior Court Case Number:** 16-1-01530-1

**The following documents have been uploaded:**

- 5-495724\_Briefs\_20170731130423D2712322\_9601.pdf  
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Briefs - Appellants  
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**Comments:**

Copy sent to: Jesse Irwin 844096 Washington Corrections Center PO Box 900 Shelton, WA 98584

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